

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: ESTATE OF ANTWON ROSE, II,

Decedent.

ORPHANS' COURT DIVISION

NO. 021804147

**EMERGENCY PETITION TO
RESOLVE DISPUTE BETWEEN
CO-ADMINISTRATORS
PURSUANT TO
20 P.A.C.S. § 3328**

Filed on Behalf of:
Antwon Rose, Co-Administrator

Counsel of Record:

Michael J. DeRiso, Esquire
PA ID # 76555

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JEFFRIES

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WILLS, ORPHANS & CO. JR.
ALLEGHENY COUNTY PA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: ESTATE OF ANTWON ROSE, II,

ORPHANS' COURT DIVISION

Decedent.

NO. 021804147

EMERGENCY PETITION TO RESOLVE DISPUTE BETWEEN CO-ADMINISTRATORS PURSUANT TO 20 Pa.C.S. § 3328

And now, comes the Petitioner, Antwon Rose, Co-Administrator of the Estate of Antwon Rose, II, by and through his counsel Michael J. DeRiso, Esquire and DeRiso DeRiso Suher & Jeffries, and files the within Emergency Petition to Resolve Dispute Between Co-Administrators Pursuant to 20 Pa.C.S. § 3328 and in support thereof, avers the following:

1. Petitioner Antwon Rose is the Co-Administrator of the Estate.
2. Respondent Michelle Kenney is also Co-Administrator of the Estate.
3. On June 19, 2018, Decedent Antwon Rose, II, died at seventeen years of age as the result of gunshot wounds sustained from Officer Michael Rosfeld of the East Pittsburgh Police Department.
4. Petitioner and Respondent are the biological parents of the Decedent.
5. At the time of his death, Decedent had no descendants.
6. Decedent died intestate.
7. Pursuant to 20 Pa.C.S. § 2103 (related to intestate succession), Petitioner and Respondent are the equal and exclusive heirs to the Estate.
8. At the time of Decedent's death, he possessed no significant real or personal property.
9. The only asset of the Estate are potential tort and civil rights claims for damages arising out of the circumstances of Decedent's death.
10. No claims have been filed against the Estate.
11. Decedent had no known debts at the time of his death.

12. As such, the duties of the Co-Administrators are to ensure that the claims of the Estate are pursued diligently, aggressively, and ultimately, successfully.
13. Upon successful resolution of the claims, the only remaining duty of the Co-Administrator's will be to ensure that the proceeds are distributed pursuant to Intestate Law.
14. After such time, the Estate may be marked as closed.
15. Shortly after Decedent's death, Petitioner and Respondent contacted Rabner Law Offices, P.C. ("Rabner Law") for representation in the opening of the estate and pursing any legal civil remedy for the death of Decedent.
16. Sometime thereafter, Respondent informed Petitioner that she had considered retaining S. Lee Merritt, Esquire as additional counsel.
17. At that time, Petitioner understood that Rabner Law was to lead the pursuit of any viable claims and that Merritt may be consulted.
18. Petitioner avers that Merritt immediately began to demand unreasonable and improper procedure.
19. Merritt insisted that a lawsuit be filed against the officer immediately without opening an estate for the decedent. Merritt further asserted, erroneously, that no estate was necessary to file a claim.
20. Merritt demanded that Rabner Law allow him to proceed as lead counsel, because he had never tried a civil rights suit and wanted to "build his resume."
21. Petitioner avers that Merritt was never formally retained by the Estate.
22. Despite this, Merritt was eager to appear on national television to discuss the circumstances of Decedent's death and presented himself as the family's attorney.
23. Merritt has taken no direct action for the benefit of the Estate.

24. Petitioner and Respondent had learned that Merritt had attempted to contact another attorney, Daryl Washington, Esquire, to assist in representing the Estate. Further, Merritt insisted that Petitioner and Respondent sign documentation formally retaining him and Mr. Washington wherein Merritt was to be listed as lead counsel.
25. Such action was further taken though Merritt understood that Rabner Law had been retained by the Estate and without informing Rabner Law.
26. Based on Merritt's actions which were taken to undermine Rabner Law and their representation at the expense of the Estate, it was agreed by both Petitioner and Respondent that he be directed to cease any further actions and that any relationship he may have had with the family was to be terminated.
27. On July 16, 2018, Petitioner and Respondent formally terminated any relationship with Merritt. A copy of the termination letter signed by Petitioner and Respondent is attached and labeled as, "Exhibit A."
28. Sometime in late 2018, it became apparent that Merritt had been accused of 16 counts of unauthorized practice of law in Texas.
29. While the counts were dismissed, Merritt's defense counsel indicated that Merritt had not paid his legal bills, but that he hoped to be paid if Merritt was ever "wildly successful." A copy of an article dated December 14, 2018 from the, "Texas Lawyer" is attached and marked as "Exhibit B."
30. Merritt was also quoted as saying his defense attorney was still waiting for "me to win a big suit." See, Exhibit B, pg. 4.
31. Such information only confirms Petitioner's suspicion that Merritt would have taken actions for the benefit of his reputation and personal financial gain instead of for the benefit of the Estate.

32. Such information further confirmed Petitioner's suspicion that Merritt had misrepresented his experience and was unable to manage the claims of the Estate on his own.
33. Rabner Law has been solely responsible in placing the parties on notice of all claims through multiple detailed letters of representation that included theories of liability and requests for preservation of evidence.
34. Rabner Law has been solely responsible for collecting any and all evidence in the claims of the Estate.
35. Rabner Law has been solely responsible for drafting, filing, and serving suit on behalf of the Estate in the U.S. District Court for the Western District of Pennsylvania against Officer Michael Rosfeld, East Pittsburgh Police Department, and Mayor Louis J. Payne averring wrongful death and civil rights violations ("Federal Action"). Suit was filed on August 1, 2018.
36. Rabner Law has maintained lines of communication with all opposing counsel, court staff, and related officials.
37. Rabner Law has been solely responsible for preparing motions and responding to defense motions in the Federal Action. A copy of the federal docket report is attached as "Exhibit C."
38. Rabner Law has been solely responsible for drafting, filing, and serving suit on behalf of the Estate in the Court of Common Pleas of Allegheny County, Pennsylvania against the University of Pittsburgh alleging wrongful death and negligence ("University Action"). Suit was filed on September 25, 2018.

39. Rabner Law has been solely responsible for preparing motions and responding to defense motions in the University Action. A copy of the state docket report is attached as "Exhibit D."

40. S. Lee Merritt, Esquire has taken no legal action on behalf of the Estate.

41. As demonstrated in Exhibits C and D, Rabner Law has exclusively and aggressively pursued litigation in both actions. In particular Rabner Law has fought to seek discovery from the Defendants in both matters as expediently as possible.

42. By Order dated, September 25, 2018, the Federal Action was stayed pending resolution of Officer Rosfeld's criminal trial related to this incident. The Order indicated that the stay would be lifted upon resolution of those proceedings. Attached as "Exhibit E."

43. Additionally, U.S. District Judge Horan ordered that the parties proceed and complete alternative dispute resolution between March 15, 2019 and May 14, 2019. See, "Exhibit F."

44. On March 22, 2019, Officer Rosfeld's criminal proceedings concluded thus alleviating the need for the stay. Due to the nature of the ongoing litigation, it is imperative that all avenues of discovery are preserved and immediately pursued.

45. By text entry Order dated April 9, 2019, the stay was in the Federal Action was formally lifted. See, Exhibit C, docket entry 45.

46. The University Action is ongoing. A response to New Matter is to be filed; however, the dispute between the Co-Administrators has prevented proper filing of the document.

47. Petitioner desires that Rabner Law continue to represent the Estate in ongoing litigation.

48. Petitioner's believes that the continued representation by Rabner Law is in the best interest of the Estate due to the law office's:

- a. significant trial and litigation experience in Allegheny County and the Western District of Pennsylvania;
- b. specific experience in successfully litigating and resolving claims related to wrongful death and excessive force of law enforcement in the Western District of Pennsylvania;
- c. experience and understanding of local court procedures and personnel.
- d. position to advance the immense costs of pursuing such litigation;
 - i. similar suits have necessitated hundreds of thousands of dollars in advanced expenses to assist in achieving a favorable outcome;
- e. is understanding of the underlying facts and legal issues of the claims;
- f. has diligently pursued those claims to Petitioner's satisfaction;
- g. has previously litigated against and negotiated with opposing counsel in the pending claims;
- h. is located in Downtown Pittsburgh; and
- i. is best suited to successfully resolve those claims.

49. It is the Petitioner's understanding that Respondent formally hired Merritt as her personal representative to assist in public statements related to the criminal proceedings in late 2018.

50. It is Petitioner's understanding that Respondent desired Rabner Law to continue to pursue the Federal Action and University Action on behalf of the Estate.

51. On March 29, 2019, Respondent filed a petition with this Honorable Court asserting that Petitioner should be removed as the Co-Administrator of the Estate (“Petition to Remove”).
52. The Petition to Remove, which was inappropriately served, contains numerous inflammatory and derogatory statements about the Petitioner that are wholly irrelevant to his ability to administrate the Estate, i.e., ensure that the litigation is properly pursued.
53. The Petition to Remove filed by S. Lee Merritt, Esquire, John Coyle, Esquire and Daniel N. Purtell, Esquire (“Respondent’s Counsel”) contains outright misrepresentations that are demonstrably false by the Petition’s own attached exhibits.
54. Specifically, the Petition to Remove indicates that Petitioner retained Fred Rabner, Esquire to assist in an arrest warrant related to child support arrears. See, Petition to Remove, Affidavit of Michelle Kenney, para. 19.
55. Such information is patently false, as Petitioner had retained the separate counsel of Jay B. Kranich, Esquire as demonstrated by his signature. See, Petition to Remove, Exhibit I.
56. The Petition to Remove contains materially false information about the representation of Rabner Law.
57. The Petition to Remove also asserts that Respondent no longer seeks the services of Rabner Law in the pending litigation and instead has retained Respondent’s Counsel as noted above. All three are based in Philadelphia and have nine years or less experience practicing law.

58. Petitioner believes and therefore avers that Merritt has enlisted further assistance from outside counsel to project the image of overall experience and specific experience in excessive force litigation.

59. On March 28, 2019, Respondent's Counsel sent correspondence to Rabner Law demanding that it cease pursuit of the Federal Action and any other actions on behalf of the Estate pending resolution of the dispute between the Co-Administrators. The March 28, 2019 correspondence is attached as, "Exhibit G."

60. Without the consent of Petitioner, Respondent's Counsel sent the March 28, 2019 correspondence and accompanying Petition to Remove to opposing counsel in the Federal Action and the University Action.

61. There is no justification for publicly announcing a dispute between the plaintiffs in a litigation to the defendants of such action.

62. It is unreasonable and potentially harmful to halt all efforts in the underlying civil suits pending resolution of the Petition to Remove as Respondent's Counsel suggests.

63. Petitioner believes and therefore avers that Respondent's Counsel is less qualified to represent the Estate in pending litigation for the following reasons:

- a. Respondent's Counsel are all of equal and significantly less overall legal experience than Rabner Law;
- b. Respondent's Counsel are not yet admitted to practice in the Western District of Pennsylvania, and therefore have never litigated any action in the District;
- c. Respondent's Counsel have never litigated in any court, state or federal, in Western Pennsylvania;
- d. Respondent's Counsel have never litigated a cause of action involving wrongful death and excessive force by law enforcement;

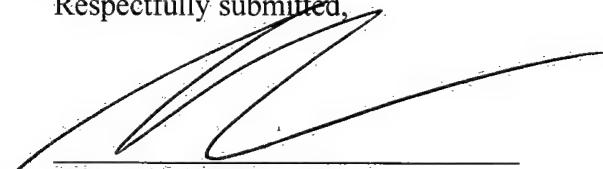
- e. Respondent's Counsel is based in Philadelphia, Pennsylvania, therefore:
 - i. in-person meetings will be impossible, and communications will be that much more difficult;
 - ii. Respondent's Counsel's ability to act on new information and evidence within the Pittsburgh area will be more limited;
 - iii. Respondent's Counsel's ability to address emergencies will be more limited;
 - iv. The estate will ultimately bear significant additional expense of travel and related matters for representation of multiple attorneys based in Philadelphia.
- f. S. Lee Merritt, Esquire has little to no experience in federal civil jury trials;
- g. S. Lee Merritt, Esquire had previously been terminated as counsel for Respondent;
- h. Based on previous actions, Petitioner has reason to not trust the intentions of S. Lee Merritt, Esquire and his associates;
- i. Respondents' Counsel have been practicing law for less than nine years;
- j. Respondents' Counsel are unfamiliar with the typical jury pool within Allegheny County and the Western District of Pennsylvania;
- k. Respondents' Counsel are unfamiliar with the courts and procedures within Allegheny County and the Western District of Pennsylvania; and
- l. Respondents' Counsel may take action for the benefit of their personal and professional reputations that is against the best interest of the Estate.

64. As such, the Co-Administrator's to the Estate dispute which law office should litigate and ultimately resolve the underlying litigation in the best interest of the Estate.

65. Under 20 Pa.C.S. § 3328(b), this Court, in its discretion, "may direct the exercise or nonexercise of the power as the court shall deem for the best interest of the estate."
66. Because the Co-Administrator's cannot resolve this dispute, Petitions requests that this Honorable Court exercise its discretion pursuant to Section 3328(b).
67. Petitioner requests that this Court resolve the dispute in his favor and that Rabner Law be directed to continue pursuing the above-described litigation.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court enter an order granting the within Petition.

Respectfully submitted,



Michael J. DeRiso, Esquire

VERIFICATION

I, Antwon Rose, hereby verify that the statements made in the within Petition are true and correct to the best of knowledge, information, and belief. I understand that these statements are made pursuant to 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

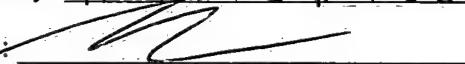
Date: 4/10/19

Antwon Rose
Antwon Rose

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Michael J. DeRiso

Signature: 

Name: Michael J DeRiso

Attorney No. (if applicable): 76555



Houston Harbaugh

ATTORNEYS AT LAW

WRITER'S DIRECT DIAL:

(412) 288-2263

ssimon@hh-law.com

File # 37391-0001

July 16, 2018

VIA FEDERAL EXPRESS AND EMAIL

S. Lee Merritt, Esquire

Merritt Law Firm, LLC

123 South Broad Street

Philadelphia, PA 19109

slm@merrittatlaw.com

**RE: The Estate of Antwon Rose II, deceased, by and through the Co-Administrators,
Michelle Kenney and Antwon Rose, Sr. - Termination of Services**

Dear Mr. Merritt,

Houston Harbaugh represents Rabner Law Offices, P.C. ("Rabner"). As you are aware, Rabner represents the Estate of Antwon Rose II, by and through the Co-Administrators, Michelle Kenney ("Ms. Kenney") and Antwon Rose, Sr. ("Mr. Rose") (together the "Family"). This letter is to provide notice that the Family is terminating any relationship with you and your firm. As detailed below, your past actions have violated the trust of the Family and your services are no longer desired.

Shortly after Rabner was retained by the Family, you began to post comments on social media indicating to the public that you were the attorney of record handling this matter and speaking on their behalf. [REDACTED] it became apparent that at that time you had no formal engagement with the Family. [REDACTED]

[REDACTED] you were contacting the press without authorization. [REDACTED]

[REDACTED] Rabner was not kept timely informed of press events.

Then, without consulting the Family or Rabner, you attempted to involve a third attorney, Daryl Washington ("Mr. Washington"), to draft a lawsuit against East Pittsburgh. Upon learning of Mr. Washington's involvement, Rabner informed you that having yet another attorney working on the case would not be in the best interest of the Family. Moreover, Rabner explained

Three Gateway Center • 401 Liberty Avenue 22nd Floor • Pittsburgh PA 15222-1005

Phone 412.281.5060 • Fax 412.281.4499 • www.hh-law.com

EXHIBIT

A

Page 2

that it would be inappropriate to list Mr. Washington as counsel when he had no legal relationship to the Family.

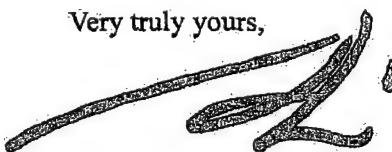
Next, you requested that Rabner allow you to be lead counsel for any litigation filed on behalf of the Family. You stated that while Rabner attorney, Fred G. Rabner, had extensive trial experience and knowledge of the local judicial system, you wanted to add additional lead counsel experience to your resume. Rabner offered to assist you in building your litigation experience, but rejected your request as again not being in the best interest of the Family. Rather than take no for an answer, you contacted Ms. Kenny and attempted to have her sign documents that would bring Mr. Washington on board and designate you as lead counsel. This attempted maneuver around the contractual relationship between Rabner and the Family represents a clear case of tortious interference. [REDACTED]

Rule 1.16 of the Pennsylvania Rules of Professional Conduct requires a lawyer to withdraw from representation when discharged by a client. Furthermore, Rule 1.2 states that "a lawyer shall abide by a client's decisions concerning the objectives of representation." Please take this letter as notice that the Family has terminated its relationship with you and your firm. Any and all documents signed by the Family authorizing your representation are hereby rescinded. The Family wishes that you refrain from contacting them or anyone with whom they are associated. From this moment on, you are not to (1) speak to anyone on the Family's behalf; (2) divulge any details of your past representation of the Family; or (3) solicit anyone to represent the Family in any capacity. The Family's signatures below verify that the above is their own request and must be followed per the Pennsylvania Rules of Professional Conduct.

We expect that you will take no further action that would be detrimental to this case or this cause. The Family wants to keep the focus on the tragedy that befell Antwon Rose II and not on the actions of you and your firm. However, if you continue to hold yourself out as representing the Family, all legal options will be considered.

Thank you for your anticipated cooperation and prompt attention to this matter.

Very truly yours,



Samuel H. Simon

Page 3

Read and agreed to by:

Date:

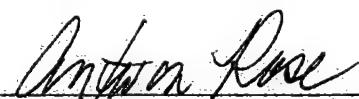
7/16/18

Date:

7/16/18



Michelle Kenney, Co-Administrator of the
Estate of Antwon Rose II



Antwon Rose, Sr., Co-Administrator of the
Estate of Antwon Rose II

TEXAS LAWYER

NOT FOR REPRINT

 Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/texaslawyer/2018/12/14/litigator-of-the-week-wills-point-attorney-helps-civil-rights-litigator-out-of-disciplinary-jam/>

Litigator of the Week: Wills Point Attorney Helps Civil Rights Litigator Out of Disciplinary Jam

Prater Monning was introduced to S. Lee Merritt, a high-profile civil rights lawyer from Philadelphia who'd gotten into trouble with Texas' Unauthorized Practice of Law Committee on charges that he illegally represented clients in the state.

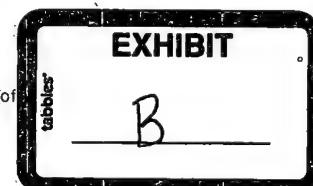
By John Council | December 14, 2018



Prater Monning of Wynne & Wynne/courtesy photo

Prater Monning had heard about out-of-state lawyers being prevented from representing civil rights clients in the 1960s South when he was still in high school. And the professional responsibility lawyer never thought he would get the chance to represent a modern-day attorney in the same predicament.

But Monning was later introduced to S. Lee Merritt



(<https://www.law.com/texaslawyer/sites/texaslawyer/2018/02/15/prominent-civil-rights-lawyer-in-black-lives-matter-movement-accused-of-unauthorized-practice-of-law-in-texas/>), a high-profile civil rights lawyer from Philadelphia who'd gotten into trouble with Texas' Unauthorized Practice of Law Committee (UPLC) on charges that he illegally represented clients in the state.

Out-of-state lawyers are allowed to practice in federal courts in Texas, but they are not allowed to practice in state district court unless they are formally admitted under pro hac vice rules.

"I typically would not have taken this, but it just didn't smell right. I thought the UPLC just went after people selling will kits, not civil right lawyers," Monning said of Merritt's case. "Back in the 1960s, people were being arrested for practicing civil rights."

And earlier this year, it appeared that Merritt might meet the same fate as his 1960s civil rights lawyer compatriots because of the UPLC litigation.

Merritt, who has a Dallas office, has made a name for himself representing North Texas clients in federal civil rights cases alleging they were victims of police brutality. He currently represents the families of Botham Jean, a 26-year-old accountant killed by a Dallas police officer who shot him after she allegedly entered his apartment thinking it was hers and mistook him for an intruder; and Jordan Edwards, a 15-year-old high school student who was killed by Roy Oliver, a Balch Springs police officer who was later convicted of murder.

The UPLC filed a complaint against Merritt in a Collin County district court, alleging that he had improperly represented clients in a state district court with another Texas lawyer although Merritt did not have a Texas law license.

Merritt later entered into a consent decree

(<https://www.law.com/texaslawyer/sites/texaslawyer/2018/02/16/civil-rights-attorney-signs-final-consent-judgment-related-to-lawsuit-for-unauthorized-practice-of-law/>) with the UPLC in which he agreed not to participate in civil rights cases filed in state district court, though he made no such agreement as to federal courts.

in state district court, though he made no such agreement as to federal courts.

However in November, the UPLC filed a motion for 16 counts of civil and criminal contempt against Merritt related to allegations that he signed up three more clients who had state law civil rights claims.

"I was looking at six months of incarceration," Merritt said of the contempt motion.

"With a punitive conviction, I would have had to report that to every court in which I practice," Merritt said. "It probably would have meant I had to withdraw from the representation of Botham Shem Jean ... and Jordan Edwards, and those are just some of the high-profile cases I have in a foreign jurisdiction outside of my home jurisdiction."

Monning argued to State District Judge Cynthia Wheless that every one of Merritt's clients had a potential federal civil rights claim. He was joined in his argument by [Yodit Tewolde](https://www.law.com/texaslawyer/almID/1202735239368/is-she-dallas-most-beautiful-lawyer/) (<https://www.law.com/texaslawyer/almID/1202735239368/is-she-dallas-most-beautiful-lawyer/>), a Dallas lawyer who also defended Merritt against the UPLC.

"He was limiting his practice to federal civil rights practice. And he has a well-recognized right because he is licensed in another state," Monning said. "He's had that right, since the 1960s, to practice law in another court."

And to back up his argument, Monning hit the law books and recounted how out-of-state civil rights lawyers faced the same blowback by State Bar officials when pursuing cases in southern states. The UPLC is an arm of the Texas Supreme Court.

"In order for him to find the appropriate case law, he had to go back to litigation from the 1960s dealing with the NAACP using Yankee lawyers to enforce civil rights law," Merritt said. "It became important to put this prosecution in the historical perspective."

Wheless agreed with Monning's argument and tossed out all 16 of the contempt charges against Merritt.

Leland de la Garza (<https://www.hallettperrin.com/attorneys/bio/leland-de-la-garza>), a member of the UPLC, said the committee is considering appealing Wheless' ruling. He also noted that the case the UPLC pursued against Merritt is unusual (<https://www.law.com/almID/1202471874163/>).

"Most UPL committee complaints don't involve a lawyer who is licensed in another state. Most involve a person who is not licensed anywhere," said de la Garza, a shareholder in Dallas' Hallett & Perrin. (<https://www.hallettperrin.com/>)

"The case involving Lee Merritt raises the issue of whether or not Merritt is conducting a federal law practice or a state law practice," de la Garza said. "That was the point in dispute based on the injunction that he agreed to. We thought that he was engaging in a state law practice, but Judge Wheless found otherwise."

Monning said that because civil rights work is not a lucrative field for most attorneys, he took Merritt's case on what he calls an "accidental pro bono" basis.

"I send Lee bills and if Lee is wildly successful, I'll probably get paid," said Monning, who years ago decamped from a big Dallas law firm practice and moved 50 miles east to Wills Point, a small town where his grandfather once practiced law. "In a country practice, that's about half of what you do."

Merritt confirmed the payment arrangement he has with Monning.

"I've made minimal payments," Merritt said with a laugh. "He's still waiting for me to win a big suit."

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JMS,MEDIATION,STAYED

**U.S. District Court
Western District of Pennsylvania (Pittsburgh)
CIVIL DOCKET FOR CASE #: 2:18-cv-01016-MJH**

KENNEY et al v. THE CITY OF EAST PITTSBURGH PA et al

Assigned to: Judge Marilyn J. Horan

Cause: 42:1983 Civil Rights Act

Date Filed: 08/01/2018

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights; Other

Jurisdiction: Federal Question

Plaintiff

MICHELLE KENNEY

*individually as the surviving mother of
ANTWON M. ROSE, II and as
ADMISTRATRIX of the Estate of
ANTWON M. ROSE, II.*

represented by **Monte J. Rabner**

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ATTORNEY TO BE NOTICED

Plaintiff

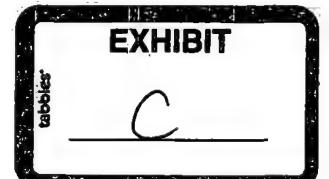
ANTWON ROSE, SR.

*individually as the surviving father of
ANTWON M. ROSE, II*

represented by **Monte J. Rabner**

(See above for address)

LEAD ATTORNEY



ATTORNEY TO BE NOTICED

Ashley M. Cagle
(See above for address)
ATTORNEY TO BE NOTICED

Fred G. Rabner
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

**THE CITY OF EAST PITTSBURGH
PA**

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ATTORNEY TO BE NOTICED

Defendant**CHIEF OF POLICE LORI FRUNCEK**

represented by **Paul D. Krepps**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Estelle K. McGrath
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant**MAYOR LOUIS J. PAYNE**

represented by **Paul D. Krepps**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Estelle K. McGrath
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/01/2018	<u>1</u>	COMPLAINT against LORI FRUNCEK, LOUIS J. PAYNE, MICHAEL ROSFELD, THE CITY OF EAST PITTSBURGH PA Filing fee \$400, Receipt #0315-4814266, filed by MICHELLE KENNEY, ANTWON ROSE, SR. (Attachments: # <u>1</u> Civil Cover Sheet) (ksa) Modified on 8/2/2018 to add receipt number. (ksa) (Entered: 08/02/2018)
08/03/2018	<u>2</u>	NOTICE that instant civil action has been designated for placement into the United States District Court's Alternative Dispute Resolution program. Parties are directed to fully complete the required 26(f) report, which includes the stipulation of selecting an ADR process. Counsel for plaintiff (or in the case of a removal action, counsel for removing defendant) shall make service of the notice on all parties. (ms) (Entered: 08/03/2018)
08/06/2018	<u>3</u>	NOTICE of Appearance by Fred G. Rabner on behalf of MICHELLE KENNEY. (Rabner, Fred) (Entered: 08/06/2018)

08/06/2018	<u>4</u>	NOTICE of Appearance by Fred G. Rabner on behalf of ANTWON ROSE, SR. (Rabner, Fred) (Entered: 08/06/2018)
08/06/2018	<u>5</u>	NOTICE of Appearance by Ashley M. Cagle on behalf of MICHELLE KENNEY. (Cagle, Ashley) (Entered: 08/06/2018)
08/06/2018	<u>6</u>	NOTICE of Appearance by Ashley M. Cagle on behalf of ANTWON ROSE, SR. (Cagle, Ashley) (Entered: 08/06/2018)
08/06/2018	<u>7</u>	PRAECIPE to Issue Summons by MICHELLE KENNEY (Rabner, Monte) Document removed from public view and redocketed at <u>11</u> . Modified on 8/7/2018. (ept) (Entered: 08/06/2018)
08/06/2018	<u>8</u>	PRAECIPE to Issue Summons by MICHELLE KENNEY (Rabner, Monte) Document removed from public view and redocketed at <u>11</u> . Modified on 8/7/2018. (ept) (Entered: 08/06/2018)
08/06/2018	<u>9</u>	PRAECIPE to Issue Summons by MICHELLE KENNEY (Rabner, Monte) Document removed from public view and redocketed at <u>11</u> . Modified on 8/7/2018. (ept) (Entered: 08/06/2018)
08/06/2018	<u>10</u>	PRAECIPE to Issue Summons by MICHELLE KENNEY (Rabner, Monte) Document removed from public view and redocketed at <u>11</u> . Modified on 8/7/2018. (ept) (Entered: 08/06/2018)
08/06/2018	<u>11</u>	PRAECIPE to Issue Summons by MICHELLE KENNEY (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons) (Rabner, Monte) Document removed from public view and redocketed at <u>12</u> . Modified on 8/9/2018. (ept) (Entered: 08/06/2018)
08/08/2018	<u>12</u>	Errata re <u>11</u> Praecipe to Issue Summons by MICHELLE KENNEY. Reason for Correction: Removed Complaint From Summons. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons) (Rabner, Monte) (Entered: 08/08/2018)
08/08/2018	<u>13</u>	Summons Issued as to LORI FRUNCEK, LOUIS J. PAYNE, MICHAEL ROSFELD, THE CITY OF EAST PITTSBURGH PA (nll) (Entered: 08/08/2018)
08/10/2018	<u>14</u>	SUMMONS/Return of Service Returned Executed by MICHELLE KENNEY. MICHAEL ROSFELD served on 8/9/2018, answer due 8/30/2018. (Rabner, Monte) (Entered: 08/10/2018)
08/10/2018	<u>15</u>	SUMMONS/Return of Service Returned Executed by MICHELLE KENNEY. LORI FRUNCEK served on 8/9/2018, answer due 8/30/2018. (Rabner, Monte) (Entered: 08/10/2018)
08/10/2018	<u>16</u>	SUMMONS/Return of Service Returned Executed by MICHELLE KENNEY. THE CITY OF EAST PITTSBURGH PA served on 8/9/2018, answer due 8/30/2018. (Rabner, Monte) (Entered: 08/10/2018)
08/10/2018	<u>17</u>	SUMMONS/Return of Service Returned Executed by MICHELLE KENNEY. LOUIS J. PAYNE served on 8/9/2018, answer due 8/30/2018. (Rabner, Monte) (Entered: 08/10/2018)

08/10/2018	<u>18</u>	Errata re <u>14</u> Summons/Returned Returned Executed by MICHELLE KENNEY. Reason for Correction: Adding Summons to Proof. (Rabner, Monte) (Entered: 08/10/2018)
08/29/2018	<u>19</u>	NOTICE of Appearance by Thomas P. McGinnis on behalf of MICHAEL ROSFELD. (McGinnis, Thomas) (Entered: 08/29/2018)
08/29/2018	<u>20</u>	NOTICE of Appearance by Jeanette H. Ho on behalf of MICHAEL ROSFELD. (Ho, Jeanette) (Entered: 08/29/2018)
08/30/2018	<u>21</u>	NOTICE of Appearance by Paul D. Krepps on behalf of LORI FRUNCEK, LOUIS J. PAYNE, THE CITY OF EAST PITTSBURGH PA. (Krepps, Paul) (Entered: 08/30/2018)
08/30/2018	<u>22</u>	NOTICE of Appearance by Estelle K. McGrath on behalf of LORI FRUNCEK, LOUIS J. PAYNE, THE CITY OF EAST PITTSBURGH PA. (McGrath, Estelle) (Entered: 08/30/2018)
08/30/2018	<u>23</u>	Joint MOTION to Stay re <u>1</u> Complaint, <i>OF ALL CIVIL PROCEEDINGS</i> by LORI FRUNCEK, LOUIS J. PAYNE, MICHAEL ROSFELD, THE CITY OF EAST PITTSBURGH PA. (Attachments: # <u>1</u> Proposed Order) (Krepps, Paul) (Entered: 08/30/2018)
08/30/2018	<u>24</u>	BRIEF in Support re <u>23</u> Motion to Stay <i>OF ALL CIVIL PROCEEDINGS</i> filed by LORI FRUNCEK, LOUIS J. PAYNE, MICHAEL ROSFELD, THE CITY OF EAST PITTSBURGH PA. (Krepps, Paul) (Entered: 08/30/2018)
08/30/2018	<u>25</u>	TEXT ORDER re <u>23</u> Motion to Stay filed by LOUIS J. PAYNE, LORI FRUNCEK, THE CITY OF EAST PITTSBURGH PA, MICHAEL ROSFELD - Response to Motion to Stay due by 9/12/2018. Signed by Judge Arthur J. Schwab on 8/30/18. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lck) (Entered: 08/30/2018)
09/05/2018	<u>26</u>	RESPONSE to Motion re <u>23</u> Joint MOTION to Stay re <u>1</u> Complaint, <i>OF ALL CIVIL PROCEEDINGS</i> filed by MICHELLE KENNEY. (Attachments: # <u>1</u> Proposed Order) (Rabner, Monte) (Entered: 09/05/2018)
09/05/2018	<u>27</u>	BRIEF in Opposition re <u>23</u> Motion to Stay filed by MICHELLE KENNEY. (Rabner, Monte) (Entered: 09/05/2018)
09/05/2018	<u>28</u>	REQUEST by MICHELLE KENNEY for entry of DEFAULT against All Defendants . (Attachments: # <u>1</u> Exhibit Attorney Certification) (Rabner, Monte) (Entered: 09/05/2018)
09/06/2018	<u>29</u>	TEXT ORDER - Plaintiffs' Request for Default (doc. no. <u>28</u>) is DENIED, without prejudice, as premature, in light of Defendant's pending Motion to Stay (doc. no. <u>23</u>). Signed by Judge Arthur J. Schwab on 9/6/18. Text-only entry; no PDF document will issue. This text-only entry constitutes the Court's order or notice on the matter. (ms) (Entered: 09/06/2018)
09/06/2018	<u>30</u>	TEXT ORDER - Defendants shall file a reply brief to Plaintiffs' Response (doc. no. <u>26</u>) and Brief (doc. no. <u>27</u>), not to exceed seven (7) pages, on or before Wednesday, 9/12/18. Signed by Judge Arthur J. Schwab on 9/6/18. Text-only entry; no PDF

		document will issue. This text-only entry constitutes the Court's order or notice on the matter. (ms) (Entered: 09/06/2018)
09/12/2018	<u>31</u>	REPLY BRIEF re <u>27</u> Brief in Opposition to Motion to Stay jointly filed by LORI FRUNCEK, LOUIS J. PAYNE, MICHAEL ROSFELD, THE CITY OF EAST PITTSBURGH PA. (McGinnis, Thomas) Modified on 9/13/2018 to correct title of event selected. (ept) (Entered: 09/12/2018)
09/13/2018	<u>32</u>	MOTION for Leave to File Sur-Reply by MICHELLE KENNEY. (Attachments: # <u>1</u> Proposed Order) (Rabner, Monte) (Entered: 09/13/2018)
09/13/2018	<u>33</u>	ORDER granting <u>32</u> Motion for Leave to File Sur-reply brief. Sur-replies due by 9/19/2018. Signed by Judge Arthur J. Schwab on 9/13/18. (lck) (Entered: 09/13/2018)
09/13/2018	<u>34</u>	Sur-Reply Brief re <u>23</u> Motion to stay filed by MICHELLE KENNEY. (Rabner, Monte) Modified on 9/14/2018 to correct document linkage. (ept) (Entered: 09/13/2018)
09/25/2018	<u>35</u>	Memorandum Order granting <u>23</u> Motion to Stay. Signed by Judge Arthur J. Schwab on 9-25-18. (nam) (Entered: 09/25/2018)
10/02/2018	<u>36</u>	STIPULATION selecting ADR process by LORI FRUNCEK, LOUIS J. PAYNE, THE CITY OF EAST PITTSBURGH PA. (Krepps, Paul) (Entered: 10/02/2018)
10/03/2018	<u>37</u>	ORDER REFERRING CASE to Mediation. John M. Noble is appointed as mediator. Mediation is scheduled for 11/20/18. Signed by Judge Arthur J. Schwab on 10/3/18. (ms) (Entered: 10/03/2018)
10/03/2018		CLERK'S OFFICE QUALITY CONTROL MESSAGE re <u>36</u> Stipulation Selecting ADR process; ERROR: Counsel is advised the Stipulation Selecting ADR form has been updated. Dispose of all previous versions of the Stipulation and begin using the amended form, with the revision date 4/2017. This message is for informational purposes only. (ept) (Entered: 10/03/2018)
10/03/2018		Remark: Attorney to disregard the 10/3/18 Quality Control message as he informed Clerk's Office the Stipulation selecting ADR process form is the most recent version. (ept) (Entered: 10/03/2018)
10/15/2018	<u>38</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Marilyn J. Horan for all further proceedings. Judge Arthur J. Schwab no longer assigned to case. All previously scheduled deadlines and proceedings shall remain in effect unless otherwise ordered by the Court. See order at 2:18-mc-1011. Signed by Chief Judge Joy Flowers Conti on 10/12/2018. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (admin1,) (Entered: 10/15/2018)
11/15/2018	<u>39</u>	MOTION to Continue ADR by LORI FRUNCEK, LOUIS J. PAYNE, MICHAEL ROSFELD, THE CITY OF EAST PITTSBURGH PA. (Attachments: # <u>1</u> Proposed Order) (McGinnis, Thomas) (Entered: 11/15/2018)
11/16/2018	<u>40</u>	RESPONSE IN OPPOSITION to <u>39</u> Motion to Continue, filed by MICHELLE KENNEY. (Attachments: # <u>1</u> Proposed Order) (Rabner, Monte) (Entered: 11/16/2018)

11/16/2018	<u>41</u>	MOTION to Lift Stay by MICHELLE KENNEY. (Attachments: # <u>1</u> Proposed Order) (Rabner, Monte) (Entered: 11/16/2018)
11/16/2018	<u>42</u>	REQUEST by MICHELLE KENNEY for entry of DEFAULT against All Defendants . (Attachments: # <u>1</u> Exhibit Certification) (Rabner, Monte) (Entered: 11/16/2018)
11/19/2018	<u>43</u>	ORDER Defendants' Joint Motion to Continue ADR (ECF No. <u>39</u>) is GRANTED.IT IS FURTHER ORDERED that the Court's prior Order Referring Case to ADR (ECF No. <u>37</u>) is hereby modified to provide that the parties shall complete ADR within sixty (60) days after March 15, 2019. Plaintiffs' Motion to Lift Stay (ECF No. <u>41</u>) is DENIED. Plaintiffs' Request for Entry of Default (ECF No. <u>42</u>) is DENIED, without prejudice, as premature in light of the stay that continues to be in effect in the above captioned matter.. Signed by Judge Marilyn J. Horan on 11/19/18. (jms) (Entered: 11/19/2018)
03/23/2019	<u>44</u>	Second MOTION to Lift Stay and <i>Compel Response to Complaint</i> by MICHELLE KENNEY. (Attachments: # <u>1</u> Proposed Order) (Rabner, Monte). Added MOTION to Compel Response to Complaint on 3/25/2019 (ept) (Entered: 03/23/2019)
03/25/2019		CLERK'S OFFICE QUALITY CONTROL MESSAGE re <u>44</u> Motion to Lift Stay, Motion to Compel. ERROR: MULTIPLE Relief Motion Filed as One Relief. CORRECTION: Attorney advised in future that Motions of this nature are to be filed using the Motion Event and clicking on all the reliefs sought in said motion. Clerk of Court added/docketed Motion to Compel Response to Complaint. This message is for informational purposes only. (ept) (Entered: 03/25/2019)
04/09/2019		Text Minute Entry for proceedings held before Judge Marilyn J. Horan: Telephonic Status Conference held on 4/9/2019. Defendants consent to lifting of the stay. Appropriate order to follow. (Court Reporter: none) Text-only entry; no PDF document will issue. This text-only entry constitutes a Minute of the Court or Notice on the matter. (jms) (Entered: 04/09/2019)
04/09/2019	<u>45</u>	TEXT ORDER granting Plaintiffs' Motion to Lift Stay <u>44</u> . The stay is hereby lifted, and the Court reserves ruling on the motion to compel at this time. Signed by Judge Marilyn J. Horan on 4/9/19. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (jms) (Entered: 04/09/2019)

PACER Service Center			
Transaction Receipt			
04/10/2019 10:21:54			
PACER Login:	ra1498:2990552:0	Client Code:	
Description:	Docket Report	Search Criteria:	2:18-cv-01016-MJH
Billable Pages:	5	Cost:	0.50

Zoom-In Zoom-Out

Session time left: 20 minute

Home > Search > Case Search

Case Details - GD-18-012378

Kenney vs University of Pittsburgh of the Commonwealth

Filing Date:	09/25/2018	Case Type:	Other Tort
Filing Time:	14:59:00	Court Type:	General Docket
Related Cases:		Current Status:	Order of Court
Consolidated Cases:		Jury Requested:	No
Judge:	Colville Robert J.		
Amount In Dispute:	\$0		

Parties Count : 8

--Litigants--

 Search

LName	FName	MI	Type	Address	Initial Service Completion	Attorney
Rose Sr.	Antwon		Plaintiff		--	Ashley Marie Cagle
Kenney	Michelle		Plaintiff		--	Ashley Marie Cagle
University of Pittsburgh of the Commonwealth System of Higher Education			Defendant		10/01/2018 1448	Jonathan Davis Marcus

Showing 1 to 3 of 3 rows

--Attorney--

 Search

LName	FName	MI	Type	Address	Phone
Cagle	Ashley	Marie	Plaintiff's Attorney	800 Law & Finance Building 429 Fourth Avenue Pittsburgh PA 15219	4127652500
Rabner	Monte	J	Plaintiff's Attorney	222 Boulevard of the Allies #2 Pittsburgh PA 15222-1616	
Marcus	Jonathan	Davis	Attorney	Marcus & Shapira LLP 301 Grant Street 35th floor Pittsburgh PA 15219-1407	4123385236

Showing 1 to 3 of 3 rows

--Non Litigants--

 Search

LName	FName	MI	Type	Address	Phone
Ignelzi	Philip	A	Judge		
Colville	Robert	J.	Judge		

Showing 1 to 2 of 2 rows

Docket Entries Count : 16

 Search

Filing Date	Docket Type	Docket Text	Filing Party	Redacted Document
3/20/2019	Order of Court	Dated 03/19/19 upon consideration of Motion Requesting the court to Amend its order denying Preliminary objections is DENIED. Ignelzi, J. Notice sent.	Philip Ignelzi A	<input type="button"/> Document 16

EXHIBIT



3/19/2019	Motion	Motion requesting the court amend its order denying preliminary objections to include a certification for immediate appeal pursuant to 42 PA.C.S.A 702b.	University of Pittsburgh of the Commonwealth System of Higher Education	Document 15
3/18/2019	Motion	requesting the court amend its order denying preliminary objections to include a certification for immediate appeal pursuant to 42 PA.C.S.A 702 (b).	University of Pittsburgh of the Commonwealth System of Higher Education	Document 14
3/12/2019	Verification	To answer and new matter	University of Pittsburgh of the Commonwealth System of Higher Education	Document 13
3/7/2019	Answer and New Matter		University of Pittsburgh of the Commonwealth System of Higher Education	Document 12
2/15/2019	Order of Court	Dated 02/15/19 ORDERED that such preliminary objects are Overruled/Denied. Defendants shall file an Answer within 20 (twenty) days of this Order. Ignezi, J., notice sent	Philip Ignezi A	Document 11
1/10/2019	Brief in Support	of Preliminary Objections	University of Pittsburgh of the Commonwealth System of Higher Education	Document 10
1/10/2019	Preliminary Objections		University of Pittsburgh of the Commonwealth System of Higher Education	Document 9
12/10/2018	Complaint		Michelle Kenney	Document 8
11/28/2018	Order of Court	Dated 11/26/18 Plaintiff's Motion for Pre-Complaint discovery is denied. Colville J. See Order for specifics. Copies sent.	Robert Colville J.	Document 7
11/5/2018	Opposition	To motion for pre-complaint discovery	University of Pittsburgh of the Commonwealth System of Higher Education	Document 6
10/31/2018	Praecept for Appearance	also filed on behalf of Michelle Kenney and Antwon Rose Sr.	Ashley Cagle Marie	Document 5
10/26/2018	Praecept for Appearance	behalf of defendant	Jonathan Marcus Davis	Document 4
10/25/2018	Praecept for Rule to File Complaint		University of Pittsburgh of the Commonwealth System of Higher Education	Document 3
10/1/2018	Sheriff Return	University of Pittsburgh of the Commonwealth System of Higher Education was served with Writ of Summons on 10/01/2018 by Served - Manager / other person authorized to accept deliveries of United States Mail. Served Steven Boyd (Receptionist)	Michelle Kenney	Sheriff Return
9/25/2018	Praecept for Writ of Summons	Returnable 10/24/18.	Michelle Kenney	Document 1

Showing 1 to 16 of 16 rows rows per page**Event Schedule Count : 0**

No matching records found

Services Count : 1 Complete Service History

Desc	Name	Service Address	Person Served	Served By	Service Date	Service Time	Status
Praecept for Writ of Summons	University of Pittsburgh of the Commonwealth System of Higher Education	4200 Fifth Avenue Pittsburgh, PA 15213 Pittsburgh	University of Pittsburgh of the Commonwealth System of Higher Education	T103441	10/1/2018 12:00:00 AM	1448	Served - Manager / other person authorized to accept deliveries of United States Mail

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHELLE KENNEY

individually as the surviving mother of

ANTWON M. ROSE, II and as

ADMISTRATRIX of the Estate of ANTWON M.

ROSE, II, ANTWON ROSE, SR.

individually as the surviving father of

ANTWON M. ROSE, II,

18cv1016

ELECTRONICALLY FILED

Plaintiffs,

v.

THE CITY OF EAST PITTSBURGH PA,
MICHAEL ROSFELD, CHIEF OF POLICE
LORI FRUNCEK, MAYOR LOUIS J.
PAYNE,

Defendants.

Memorandum Order on Motion to Stay Case (doc. 23)

This a wrongful death and survival action brought by the parents of Antwon M. Rose, II, a 17-year-old minor who suffered fatal gunshot wounds from East Pittsburgh Police Officer Michael Rosfeld on the evening of June 19, 2018. This civil action was brought pursuant to 18 U.S.C. Section 1983, on the basis that Defendants, while acting under color of state law, violated the civil rights of Plaintiffs. Plaintiffs allege civil rights violations in the nature of excessive force, failure to train, unconstitutional customs or policies, as well as denial of medical care, substantive due process claims, and other pendent state laws claims including assault and battery.

Pending before this Court is the Joint Motion to Stay the Civil Proceedings (filed by all Defendants), Plaintiffs' Response in Opposition thereto, Defendants' Reply, and Plaintiffs' Sur-Reply: Doc. 23, 26, 31, and 34. For the reasons that follow, the Motion to Stay will be granted



for one year (until September 25, 2019), or within 30 days upon the conclusion of the criminal proceedings, whichever occurs first.

The procedural history of this case reveals that the Complaint was filed on August 1, 2018, and the Joint Motion to Stay was filed on August 30, 2018. Thereafter, a Request for Default was filed on the basis that the Joint Motion to Stay is not a responsive pleading, which the Court denied without prejudice due to the nature of the pending Motion.

As for the pending Motion to Stay, there is no dispute between the parties that the Court enjoys inherent discretion on whether to stay a civil matter, where, as here, a related criminal matter is pending. *Wallace v. Kato*, 549 U.S. 384, 393 (2007) (“it is within the power of the district court” to stay a civil action). “The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with the economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”

Landis v. North American Co., 299 U.S. 248, 254–55, 57 S.Ct. 163, 81 L.Ed. 153 (1936) (citations omitted).

As set forth in the Complaint, Defendant Rosfeld is subject to homicide charges stemming from this situation, which are currently pending in the Allegheny Court of Common Pleas, having been filed on July 25, 2018. The docket of which this Court takes judicial notice reveals that Defendant Rosfeld was arraigned on August 22, 2018, and a trial date on these criminal charges is currently scheduled for February 26, 2019, before Judge Alexander P. Bicket.

The parties are at odds as to whether the Court should employ a three or a six-part test when considering whether to stay a pending civil action. The Court will employ Plaintiffs’ requested three-part test as ultimately, the three-factor test “overlaps significantly with and

addresses the same concerns as” the six-factor test. *Maloney v. Gordon*, 328 F.Supp.2d 508, 511 n.7 (D. Del. 2004). Plaintiffs emphasize, and this Court agrees, that a stay is an extraordinary measure and that criminal defendants have no generalized due process right to stay proceedings in a related civil action. *United States v. Breyer*, 41 F.3d 884, 893 (3d. Cir. 1994); *International Fidelity Ins. Co. v. Podlucky*, 2007 WL 2752139 (W.D. Pa. 2007).

That said, after consideration of the following three overarching factors, the Court finds that a relatively brief and finite stay in this case is appropriate, given the substantial overlap of the criminal and civil case, and the pending criminal charges. First, the Court has considered whether a grant of the stay would simplify the issues in this case - - undoubtedly, it will. Should Defendant Rosfeld stand convicted of homicide, the excessive force claim and related claims will become less onerous for Plaintiffs to prove. Not only that, but if the Court were not to stay this case, the advancement of the litigation through the discovery process, while the criminal charges are pending, will be fraught with Fifth Amendment objections by Defendants, and many discovery roadblocks for Plaintiffs, which should dissipate after the criminal charges are resolved. Second, the stage of this litigation tips in favor of a stay, as this matter is in its procedural infancy, and the criminal charges are already pending with a trial set. Third, Plaintiffs argue that undue prejudice would result from a stay, in that “one moment’s delay is far too long for the family of Antwon Rose to seek justice they so rightfully deserve,” and the Court appreciates Plaintiffs’ perspective. Ultimately, for the reasons set forth above, the Court finds that the end of justice (judicial economy and efficiency) are best served by a modest stay of these proceedings.¹ Again, the Court will not grant an indefinite stay, but instead, has set an outside

¹ In its Sur-Reply, Plaintiffs have raised the following two arguments. First, Plaintiffs note that Defendant Rosfeld is a Defendant in another civil case pending before the United States District for Western District of Pennsylvania (*Riley et al. v. Sin City et al.*,

window of one year, or the conclusion of criminal proceedings, whichever occurs first. Additionally, the parties may petition the Court to lift or modify the stay at any time, if a change of circumstances warrants. The Court Orders the parties to continue to mediate this case. The parties shall submit a Stipulation selecting ADR process by 4:00 p.m. on October 2, 2018.

Accordingly, the 25th day of September, 2018, the Court grants the Motion for Stay ([doc. 23](#)). Any party may Petition to Reopen this case after the conclusion of one year (September 25, 2019), or within 30 days upon the conclusion of the criminal proceedings, whichever comes first, or upon any change of circumstances that warrants it.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All ECF Registered Counsel of Record

2:18-cv-1037), and there is no stay in that case, so there, likewise, should not be a stay here. However, the facts of that case have no nexus to the present factual allegations. Second, Plaintiffs have raised the prospect of bifurcating this matter to allow discovery to proceed against the other Defendants (City of Pittsburgh, Mayor Payne, and Chief Fruncek), who are not “affected” by the criminal prosecution. While at first blush, this prospect sounds compelling, the practical matter is that at this juncture, it would result in duplication of the litigation efforts and does not amount to a judicially efficient practice.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHELLE KENNEY, individually as the)
surviving mother of ANTWON M. ROSE, II)
and as ADMINISTRATRIX of the Estate of)
ANTWON M. ROSE, II; ANTWON ROSE,)
SR., individually as the surviving father of) Civil Action No. 18-1016
ANTWON M. ROSE, II,)
Plaintiffs,) Judge Marilyn J. Horan
)
v.)
)
THE CITY OF EAST PITTSBURGH;)
MICHAEL ROSFELD; CHIEF OF POLICE)
LORI FRUNCEK; MAYOR LOUIS J.)
PAYNE,)
Defendants.)

ORDER ON MOTIONS

Before the Court are Defendants' Joint Motion to Continue ADR (ECF No. 39), Plaintiffs' Response in Opposition (ECF No. 40), Plaintiffs' Motion to Lift Stay (ECF No. 41), and Plaintiffs' Request for Entry of Default (ECF No. 42).

Upon consideration of the above motions, IT IS HEREBY ORDERED as follows:

Defendants' Joint Motion to Continue ADR (ECF No. 39) is GRANTED.

IT IS FURTHER ORDERED that the Court's prior Order Referring Case to ADR (ECF No. 37) is hereby modified to provide that the parties shall complete ADR within sixty (60) days after March 15, 2019.

Plaintiffs' Motion to Lift Stay (ECF No. 41) is DENIED.

Plaintiffs' Request for Entry of Default (ECF No. 42) is DENIED, without prejudice, as premature in light of the stay that continues to be in effect in the above captioned matter.

SO ORDERED this 19th day of November, 2018.

s/Marilyn J. Horan
United States District Judge





MCELDREW YOUNG*

March 28, 2019

Via email and certified mail 7017.3380 0000.5494-5183

Fred G. Rabner, Esquire
Rabner Law Offices
429 Fourth Avenue
800 Law & Finance Building
Pittsburgh, PA 15219

Re: Estate of Antwon Rose, II

Mr. Rabner:

As you know, my firm has been retained by Michelle Kenney. Enclosed please find a courtesy copy of the Petition to Remove Antwon Rose as Personal Representative of the Estate of Antwon Rose, II. The enclosed Petition will be filed today with the Orphan's Court in Allegheny County.

Please allow this letter to serve as a formal request from Ms. Kenney, in her role as personal representative of the Estate, that you withdraw your pending motion to lift the stay of proceedings in *Kenney, et al. v. The City of East Pittsburgh, et al.*, Civ. No.: 2:18-cv-01016-MJH. Ms. Kenney requests that you take all appropriate steps to ensure the federal court proceedings remain in stay pending the resolution of the Petition to Remove Antwon Rose as Personal Representative of the Estate of Antwon Rose, II. This request includes withdrawing your motion to lift the stay before the close of business on Friday, March 29, 2019. If you do not intend to comply with Ms. Kenney's request, please advise the reasons for your refusal in writing, addressed to my attention.

Thank you for your prompt attention to this matter.

Sincerely,

John J. Coyle, Esq.

Encl. (1)

Cc: Michelle Kenney
Samuel H. Simon, Esq.
Paul D. Krepps, Esq.
Estelle K. McGrath, Esq.
Thomas P. McGinnis, Esq.
Jeanette H. Ho, Esq.
(All via email without enclosure)

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: ESTATE OF ANTWON ROSE, II,

ORPHANS' COURT DIVISION

Decedent.

NO. 021804147

FINAL ORDER

AND NOW, this _____ day of _____, 2019, it is hereby ORDERED,
ADJUDGED, and DECREED as follows:

The Court, having reviewed Petitioner Antwon Rose's Emergency Petition to Resolve Dispute Between Co-Administrator Pursuant to 20 Pa.C.S. § 3328, hereby exercises its discretion and jurisdiction under Section 3328 in favor of Petitioner, Antwon Rose.

Rabner Law Offices, P.C. is hereby granted exclusive authority to act as counsel for the Estate in the pending matters in the U.S. District Court for the Western District of Pennsylvania (Dkt. No. 2:18-cv-01016) and the Court of Common Pleas of Allegheny County, Pennsylvania (Dkt. No. GD-18-012378). Such authority includes but is not limited to; filing pleadings/motions/court documents; appearing in court; requesting discovery; responding to discovery requests; consulting witnesses; consulting experts; participating in alternative dispute resolution; and any other necessary actions for the benefit of Litigation.

It is further ORDERED that S. Lee Merritt, Esquire, McEldrew Young, or any other newly retained counsel for Respondent, Michelle Kenney, shall take no action on behalf of the Estate as it relates to the pending matters in the U.S. District Court for the Western District of Pennsylvania (Dkt. No. 2:18-cv-01016) and the Court of Common Pleas of Allegheny County, Pennsylvania (Dkt. No. Gd-18-012378). S. Lee Merritt, McEldrew Young, or any other newly retained counsel for Respondent shall not participate in: filing pleadings/motions/court documents; appearing in court; requesting discovery; responding to discovery requests; consulting witnesses; consulting experts; and alternative dispute resolution.

Respondent's Counsel is further directed to cease any and all communication with opposing counsel, insurance carriers, related parties, and/or potential witnesses in the above-noted litigation. Respondent's Counsel shall not issue any public statements or make any public appearances on behalf of the Estate or related to the above-noted litigation.

Rabner Law Office shall keep Respondent's counsel informed, by written correspondence, of any significant progress in the above-noted litigation. Rabner Law Offices is further authorized to directly respond to any communications by Respondent as it relates to the above-noted litigation.

BY THE COURT:

_____, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: ESTATE OF ANTWON ROSE, II,

ORPHANS' COURT DIVISION

Decedent.

NO. 021804147

PRELIMINARY ORDER

AND NOW, this _____ day of _____, 2019, it is hereby ORDERED,
ADJUDGED, and DECREED as follows:

The Court, having reviewed Petitioner Antwon Rose's Emergency Petition to Resolve Dispute Between Co-Administrator Pursuant to 20 Pa.C.S. § 3328, hereby exercises its discretion and jurisdiction under Section 3328.

The Court recognizes that there is a need for experienced counsel familiar with the proceedings in the pending matters in the U.S. District Court for the Western District of Pennsylvania (Dkt. No. 2:18-cv-01016) and the Court of Common Pleas of Allegheny County, Pennsylvania (Dkt. No. GD-18-012378). Such need requires immediate, continuing, and timely action.

As such, pending final resolution of the Emergency Petition, Rabner Law Offices, P.C. is hereby granted exclusive authority to act as counsel for the Estate in the pending matters in the U.S. District Court for the Western District of Pennsylvania (Dkt. No. 2:18-cv-01016) and the Court of Common Pleas of Allegheny County, Pennsylvania (Dkt. No. GD-18-012378). Such authority includes but is not limited to: filing pleadings/motions/court documents; appearing in court; requesting discovery; responding to discovery requests; consulting witnesses; consulting experts; participating in alternative dispute resolution; and any other necessary actions for the benefit of Litigation.

It is further ORDERED that S. Lee Merritt, Esquire, McEldrew Young, or any other newly retained counsel for Respondent, Michelle Kenney, shall take no action on behalf of the Estate as

it relates to the pending matters in the U.S. District Court for the Western District of Pennsylvania (Dkt. No. 2:18-cv-01016) and the Court of Common Pleas of Allegheny County, Pennsylvania (Dkt. No. Gd-18-012378). S. Lee Merritt, McEldrew Young, or any other newly retained counsel for Respondent shall not participate in: filing pleadings/motions/court documents; appearing in court; requesting discovery; responding to discovery requests; consulting witnesses; consulting experts; and alternative dispute resolution.

Respondent's Counsel is further directed to cease any and all communication with opposing counsel, insurance carriers, related parties, and/or potential witnesses in the above-noted litigation. Respondent's Counsel shall not issue any public statements or make any public appearances on behalf of the Estate or related to the above-noted litigation.

Rabner Law Office shall keep Respondent's counsel informed, by written correspondence, of any significant progress in the above-noted litigation. In the event that Respondent would directly contact Rabner Law Offices, then Rabner Law Offices is authorized to directly respond to Respondent as it relates to those communications. Respondent shall be solely responsible for informing her retained counsel of such interactions.

BY THE COURT:

_____, J.